IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.62 of 2007

Date of Decision: May 09, 2007

Salinder Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.T.S.Sangha, Advocate,
for the petitioner.

Mr.Parveshinder Singh Sidhu, Addl.A.G.Punjab,
for the State.

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RANJIT SINGH, J.

Petitioner, who is charged with an offence under Section 304 IPC, has filed this revision petition against the order framing the charge pleading that no offence under the section charged is made out and at the most offence under Section 304-A IPC would be

revealed.

The FIR in this case is lodged by one Ashok Kumar alleging that he along with his brother Hem Raj were returning in their Maruti Car bearing registration No.PB19-0405 after attending to their business at Kapil Palace. Hem Raj was sitting in the car being driven by the complainant. In the vicinity of ITI chowk, Barnala, L.P.Truck was noticed coming with a high speed. The complainant applied brakes to stop his car, but truck driver brought his truck to a halt while driving it in dangerous and negligent manner. The complainant got down from the car and exchanged words with the truck driver complaining that complainant was about to lose his life because of his rash driving. Truck driver, however, retorted back saying that he was not bothered and would drive the truck in similar manner. Nephew of the complainant was also seen coming on his Hero Honda Motor Cycle. Truck driver drove the truck while muttering something when the complainant followed him in their car. The driver while driving the truck at a high speed and in a rash and negligent manner intentionally hit the Motor Cycle driven by the nephew of the complainant. As a result, the Motor Cycle was dragged to a pit on the side of the road. The truck then hit the electric pole which broke. The complainant along with his brother came out of the car and attended to their nephew. Injured was shifted to Civil Hospital, Barnala where he breathed his last. A case was registered against the truck driver, whose identity and name was learnt and noted by the complainant at the site of accident. FIR No.82 dated 15.3.2006 for offences under Sections 304/325 IPC was registered at Police Station Kotwali, Barnala. On completion of investigation, the petitioner is charged with

an offence under Section 304 IPC for committing culpable homicide not amounting to murder by causing death of Kapil and also for voluntarily causing grievous hurt to Indesh Kumar for an offence under Section 325 IPC. The petitioner has filed the present revision pleading that no offence under Sections 304 and 325 IPC would be made out against him considering the facts of the case.

Notice in this case was issued and the counsel are heard.

Mr.T.S.Sangha, the counsel appearing for the petitioner would say that this is a case of accident, where no intention or knowledge can be attributed to the petitioner for causing death of Kapil or injury to Indesh Kumar, who statedly was occupant of the truck to attract the provisions of Sections 304 and 325 IPC respectively. The counsel says that the order framing the charge would call for interference as the offences under Sections 304-A and 337 IPC alone are revealed in this case.

State counsel, on the other hand, would urge that the facts, as revealed, would justify framing of a charge under Section 304 IPC as the petitioner has acted in a manner that he can be attributed with the knowledge to cause death revealing an offence under Section 304 IPC.

The facts, as mentioned in the FIR, are noticed in detail above. This may not appear to be a case of only rash or negligent driving. Exact view in this regard would ultimately be formed on the basis of evidence that will be led by the prosecution during the course of trial. At this stage, the Court is not required to enter into meticulous consideration of the evidence and material and it is to see if *prima-facie* case is made out against the accused. Any interference

by this Court while inherent or revisional jurisdiction may not be called for when material on record that too *prima-facie* constitute an offence charged. From the statement of the complainant and other material, it cannot be said that it would only reveal an offence of rash and negligent driving. A case of reckless and utterly callous conduct, as such, may attract the offence under Section 304 IPC. This court in the case titled ***Court on its own motion Vs. State of Punjab and others 2005 (4) R.C.R. (Criminal) 673*** while considering the similar issue came to hold that:-

> "We are, therefore, of the opinion that in cases covered by the News items and in similar matters not necessarily arising out of motor accidents which are the result of utter callousness, that come to our notice with disturbing regularity and are a matter of deep concern, a prosecution for an offence punishable only under Section 304-A of the Indian Penal Code may not be in order, and the circumstances may warrant more vigorous action. We, therefore, issue a direction to Courts subordinate to this Court to ensure that in cases of extreme negligence and rashness and only where the evidence and circumstances so warrant, a charge under Section 304 or 302 of the Indian Penal Code adequate to the circumstances of the case be framed alongwith an alternative charge under Section 304-A of the Code. The matter is disposed of accordingly."

In this case, the court noticed the definition of culpable homicide and murder with special reference to Clause 4thly of

Section 300, which provides that if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, then it would be an offence of culpable homicide. In ***Court on its own motion's case (supra)***, the Division Bench also noticed that it would be the nature of the act that would determine the gravity and nature of the offence.

Relying upon the above noted judgment, Mr.Sangha points out that this court, while holding that charge under Section 304 IPC could be framed having regard to the facts in a particular case, has further viewed that alternative charge under Section 304-A IPC may also be framed. Section 221 of the Code of Criminal Procedure provides that if a single act or serious of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. Thus, the question of framing charge in the alternative can arise when there is no doubt about the facts, which can be proved but doubt is as to what offences will be constituted on those facts. Section 222 Cr.P.C. would entitle the court to convict an accused with minor offence if proved, though not charged. However, if two offences involve different elements and different question of facts, one offence cannot be said to be minor to the other. In case where a man is charged with an offence which is entirely different from the offence proved, then he cannot be convicted of it unless he is charged for it. A minor offence under

Section 222 Cr.P.C. cannot be independent of the main offence or an offence carrying lesser punishment alone but it has to be a part of the main offence. Where injury is caused by shooting but there is no proof of intention to kill, then conviction under Section 307 IPC was altered to Section 337 IPC though there is no charge for it. (See AIR 1960 All.387). Normally such offences have to be cognate offence to the offence charged. Though Section 221(2) of Cr.P.C. may leave a discretion with the court to convict a person of an offence which he is shown to have committed, though not charged, but still preferring of an alternative charge where different ingredients of the offence may be attracted would be necessary to avoid any prejudice to the accused in such a case. A course of preferring an alternative charge in cases, like present one has also been advocated by the Division Bench of this court in ***Court on its own motion's case (supra)***. Mr.Sangha has also referred to the case of ***State of Gujarat Vs. Haidarali Kalubhai, AIR 1976 Supreme Court 1012*** to say that Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300 IPC. It is noticed in this case, if a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death of some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with intent to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. It was further held in this case that when intent or knowledge as described above is the direct motivating force of the act complained

of, Section 304-A has to make room for the graver and more serious charge of culpable homicide. Thus, it can be stated that offence under Section 304-A IPC would exclude the ingredients of offence of culpable homicide or murder and if one is to be found guilty of an offence of rash or negligent act, he must be put to notice in this regard under Section 304-A IPC in the alternative, when he is being charged for an offence under Section 304 IPC for culpable homicide not amounting to murder. Reference, in this regard, is also made to the case of ***Madan Raj Bhandari Vs. The State of Rajasthan, AIR 1970 436*** where the Hon'ble Supreme Court found that when an accused was asked to defend himself against the charge on which he was tried, then conviction for abetting to cause that offence was not proper as the accused was likely to be prejudiced by the charge on the basis of which he was tried.

In view of the factual position in this case and the law, as discussed above, this appears to be a proper case where a charge under Section 304-A may need to be preferred in an alternative to the charge under Section 304 IPC, as has been advocated in ***Court on its own motion's case (supra)***, and also to avoid any prejudice being caused to the petitioner.

The action of the court in framing the charge against the petitioner under Section 325 IPC for having caused injury to Indesh Kumar can not be justified having regard to the facts of this case. Indesh Kumar was occupant of the truck alongwith the petitioner and has received the injuries on account of this incident/accident where the truck, after hitting the Motor Cycle, had gone and struck against the pole. No allegation of any intention or knowledge on the part of

the petitioner can be made to attract the offence under Section 325 IPC. This Section punishes voluntarily causing grievous hurt with blunt weapon, which is not made out in the present case. The petitioner, however, cannot escape responsibility of doing rash or negligent act, which has resulted in injuries to Indesh Kumar. The offence under Section 337 IPC would sound appropriately attracted in this case. A charge under said Section, as such, is revealed, rather than the one framed by the trial court under Section 325 IPC.

The present revision is partly allowed. The trial court would frame a charge under Section 304-A IPC in alternative to a first charge framed under Section 304 IPC. The charge framed against the petitioner under Section 325 IPC cannot be sustained and is accordingly set-aside. However, the facts and the allegations would certainly attract an offence under Section 337 IPC and, thus, a charge under the said Section be accordingly framed against the petitioner by the trial court for having caused injury to Indesh Kumar by doing an act, which is rash or negligent.

May 09, 2007 (RANJIT SINGH)
ramesh JUDGE